IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-12-2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN

WRIT PETITION NO.19387 OF 1999

Accident Victims Association
(Regd.) by its Secretary
C. Lakshmi Narain .. Petitioner

Vs.

1. The State of Tamil Nadu,
rep. by Chief Secretary,
Fort St. George,
Chennai 600 009.

2. The Director General of Police,
Government of Tamil Nadu,
Government Estate,
Chennai 600 002.

3. Automobile Association of
Southern India,
by its President K. Ravindran,
Chennai.
(R3 Impleaded as per order of Court
dt. 3.7.2000 in WMP.8916/2000)

4. Two Wheeler Riders Association
of India (TRAI), (Regd.)
Rep. by its President
J.S.N. Nimmu Vasanth

5. R. Muthukrishnan,
Advocate,
Chennai.
(RR4 & 5 impleaded as per order
dt 10.10.2007 by SJMJ & NPVJ in
WPMP. 2321 and 2323/07 in WP.19387/99) .. Respondents

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Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus directing the respondents (1) to implement the provisions of Section 129 of the Motor Vehicles Act, 1988 by enforcing the compliance of the Provisions regarding the compulsory wearing of helmets by two wheeler drivers and pillion riders in the entire State of Tamil Nadu (2) to take criminal action against those not complying with the said provisions of law and the 2nd respondent, Director General of Police, Tamil Nadu be further directed to take appropriate action against the Police Officials and other officials in case they do not implement those provisions meticulously and efficiently.

For Petitioner : Mr.C. Lakshmi Narain
Party-in-Person

For Respondents 1&2 : Ms.D. Geetha, AGP.,

Respondent-3 : No Appearance

Respondent-4 : Ms.J.S.N. Nimmu Vasanth
Party-in-person

Respondent-5 : Mr.R. Muthukrishnan
Party-in-person

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O R D E R

P.K. MISRA, J

The present writ petition has been filed by the Accident Victims Association, a registered Association, represented by its Secretary, who is also a practising Advocate. Originally the writ petition was filed against the State of Tamil Nadu and the Director General of Police as Respondents 1 and 2 with the following prayer :

> ". . . directing the respondents (1) to implement the provisions of Section 129 of the Motor Vehicles Act, 1988 by enforcing the compliance of the Provisions regarding the compulsory wearing of helmets by two wheeler drivers and pillion riders in the entire State of Tamil Nadu (2) to take criminal action against those not complying with the said provisions of law and the 2nd respondent, Director General of Police, Tamil Nadu be further directed to take appropriate action against the Police Officials and other officials in case they do not implement those provisions meticulously and efficiently."

Subsequently, Automobile Association of Southern India, represented by its President was included as Respondent No.3. Respondent Nos.4 and 5,

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two individuals, have got themselves impleaded opposing the prayer in the writ petition.

2. It is asserted in the writ petition that such petition has been filed in public interest with a view to protect the victims of road accidents, particularly the drivers and pillion riders of two wheelers who are not wearing helmets, which is a protective gear intended to protect serious damages in case of accidents caused to or by the scooterist. It is further asserted that inspite of the specific provisions contained in the Motor Vehicles Act in the shape of Section 129, the State Government has not taken effective steps to ensure strict compliance with such provision. In the affidavit, various statistics have been highlighted to indicate about the serious injuries suffered by the victims of such road accidents.

3. A counter affidavit was filed by the Deputy Secretary to the Government obviously on behalf of Respondent No.1. In such counter affidavit it has been indicated that Section 129 of the Motor Vehicles Act envisages wearing of protective head gear and Section 177 provides that any person who contravenes any provision of the Motor Vehicles Act, any rule, regulation or notification made thereunder shall, if no penalty is provided for the offence be punishable for the first offence with fine which may extend to one hundred rupees, and for any second or subsequent offence with fine which may extend to three hundred rupees. While indicating that road accidents occur due to several factors such as road conditions, traffic congestions, mechanical problems and negligent driving or drunken driving, it is also admitted that wearing of headgears reduce the fatal accidents due to head injury. Therefore, it has been indicated in the counter that the State Government has decided to implement the wearing of headgear by enforcing the provisions of Section 129 of the Motor Vehicles Act and Rule 138(4)(f) of the Central Motor Vehicles Rules, 1989. It is further indicated that the State has decided to issue appropriate order for enforcing the aforesaid provisions in a phased manner and wearing of helmets would be made compulsory from 1.6.2007 in Chennai and 5 other Corporations and would be made compulsory in the remaining areas in the State with effect from 1.7.2007. It has been indicated that such a timeframe has been conceived keeping in view the practical difficulties such as availability of helmets.

In a subsequent counter affidavit filed on 22.8.2007, purporting to be a common counter affidavit, not only in respect of W.P.No.19387 of 1999 but also in respect of W.P.No.719 of 2007, which had been subsequently filed for almost similar relief. The very same Deputy Secretary has reiterated the stand taken in the earlier affidavit and has indicated about the issuance of various G.Os. It is also highlighted about the efforts taken to implement the rules relating to helmet wearing. It has been further indicated that a draft notification had been issued containing certain exemptions and subsequently such draft rules have been framed. As per such rules, exemption has been issued in favour of the members of "Meivazhi Sabha" or "Meivazhi Salai", women and children

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travelling as pillion riders.

4. A reply affidavit has been filed by the petitioner wherein it is indicated that because of the relaxation of the Rule, certain accidents have been proved fatal and some details have been given.

5. The main opposition to the compulsory wearing of helmet has come from Respondents 4 and 5, who have been impleaded on the basis of their own petitions. Incidentally, it can be pointed out that such impleaded respondents had themselves filed writ petitions challenging the validity of the Government Order to enforce the rules relating to wearing of helmets. Such writ petitions have been dismissed by a Division Bench as per the decision reported in (2007) 5 MLJ 1351 (R. MUTHUKRISHNAN AND OTHERS v. SECRETARY TO HOME DEPARTMENT, GOVERNMENT OF TAMIL NADU, CHENNAI AND OTHERS).

6. Respondent No.4 is the President of Two Wheeler Riders Association of India, who apart from being an Engineer / Software Consultant, is also a social activist. She has stated in her affidavit, on the basis of which she was impleaded, that the writ petition was not a Public Interest Litigation and the petitioner had no locus standi to seek strict enforcement of the helmet rule and particularly, there is no justification to pray for criminal action against those who are not wearing helmets as if "... they are criminals of sort such as murderers, robbers, dacoits or even terrorists". It is further stated that even though the persons using scooters can be educated to wear helmets, helmet wearing need not be made compulsory and should be left to the sound discretion of the person concerned and there is no justification to initiate any criminal action. It has been further stated that the accidents occur due to various other factors such as bad road condition, negligent driving and the like and wearing of helmet obviously cannot prevent an accident from being caused nor it can be said that by wearing helmet, there would be any gravity of any injury being non-fatal. It is further stated that taking advantage of such provisions, innocent people are being harassed by the law enforcing agency, which is even recognized from the fact that the Chief Minister has issued public statement that those who are not wearing helmets need not be harassed. It is also stated that this rule relating to wearing of helmet has been found illegal to promote vested interest.

7. Respondent No.5 in his affidavit, even much more vociferous in his objection, has challenged the credibility of the petitioner and has stated that the petition has been filed not as a public interest litigation but as a politically inspired litigation or publicity interest litigation and, therefore, such litigation should not have been entertained. It has been further stated in his affidavit that such a writ seeking to enforce a particular provision or to initiate criminal action against those who are not complying with the helmet rule or taking appropriate action against the police officials and other officials in case they do not implement the helmet rule, only seeks to encroach upon

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the jurisdiction of the Executive and should not be encouraged. It has been further indicated that the fact that writ petition of the year 1999 has remained pending for about 8 years and thereafter was tagged with the writ petition of the year 2007 only indicates that this could have happened "only by misuse of judicial machinery by the petitioner C. Lakshmi Narain." It has been further stated that when the connected W.P.No.719 of 2007 has been dismissed as infructuous, upon issuance of the Government Order and the Rules, there is no further scope for passing any order in W.P.No.19387 of 1999. Ultimately, it has been stated that 2 crores riders of the Tamil Nadu do not want wearing of the helmet to be made compulsory and their wishes should not be ignored at the instance of a person who does not have any locus standi in the matter.

8. After hearing of the writ petition, the main contesting parties, all of whom are appearing in person, have been given opportunity to file any Memorandum of Written Submissions. Accordingly, Respondent No.5 has filed memorandum of Written Submissions reiterating the stand highlighted in his affidavit and also the submissions which had been made by him in course of hearing. Similarly, the petitioner-in-person has also filed written submissions reiterating and highlighting the stand already taken. In addition to that, it has been contended in such written submissions that the Rule of the State Government granting exemption in favour "Meivazhi Sabha" and women and children as pillion riders, is illegal and ultra vires.

9. The criticism heaped by Respondent No.5 to the effect :

> "It is beyond anybody's comprehension that the so-called public interest litigation W.P.No.19387 of 1999 could not be disposed off by the Madras High Court for the last eight years and that that petition could be got clubbed after eight years from its original date of filing with another writ petition in WP.No.719 of 2007. But, this has happened and this could have happened only by misuse of judicial machinery by the petitioner C. Lakshmi Narain."

is unjustified and unwarranted to say the least. The petitioner cannot be blamed if a writ petition remains pending before the High Court for a long period. It is quite well known that for a considerable length of time, the High Court was functioning almost at half strength and the establishment of Permanent Bench at Madurai did not help the matters inasmuch as even with the limited number of Judges available, some of the Judges were being sent to Madurai. There is no denying fact that pendency of litigations in almost all the High Courts including the Madras High Court is assuming alarming proportion. It also cannot be disputed that the single biggest reason for mounting arrears is woefully disproportionate shortage in the Judges strength compared to the number of litigations. The obvious remedy of increasing the Judges strength is not within the control of the High Court, far less within the control of the petitioner. Therefore, it is uncharitable to blame the petitioner for the

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pendency of the writ petition for about 8 years. It is also interesting to note that even though the writ petition had remained pending for a long period, counter affidavit was filed by the State Government only in February, 2007.

10. So far as the locus standi is concerned, it has been vociferously contended by Respondent No.5 and to some extent by Respondent No.4 that the petitioner has filed the writ petition only as a publicity interest litigation or a politically inspired litigation and such writ petition should not have been entertained and should be dismissed. For the aforesaid purpose, Respondent No.5 has placed reliance upon the decision of the Supreme Court reported in AIR 2007 SC 758 (NEETU v. STATE OF PUNJAB AND OTHERS). Except vaguely alleging that the writ petition is politically inspired, Respondent No.5 has not brought on record any acceptable material worth its name, to come to a conclusion that the litigation is in fact politically inspired. Merely because certain news items have appeared in some newspapers it cannot be said that the writ petition was a politically inspired one. Similarly, the allegation that the writ petition was a publicity interest litigation is also devoid of any substance and has remained only an attractive phrase repeated with monotonous regularity in the affidavit.

11. The other contention of Respondent No.5 that in view of dismissal of W.P.No.719 of 2007 as infructuous, nothing remains to be decided in the present writ petition, is also bereft of substance. As has been observed by the Division Bench, the present writ petition contains a prayer to take action against those who are violating the provisions of wearing helmet and also to take action against the law enforcing officials who are slack in discharging their duty to enforce such provisions. The other writ petition was dismissed as infructuous on the ground that the State Government had already issued Government Order and framed Rules and therefore there was no further necessity to issue any direction. At that stage, the Division Bench had observed that in the present writ petition there was an additional prayer, namely, to take action against the officials who are not discharging their duties. Whether any such direction is required to be issued or not is a different matter, but it cannot be said that the writ petition had become infructuous on the issuance of G.Os by the Government.

12. Respondent No.4 has submitted that whether a person should wear helmet or not, should be left to the sound discretion of the person concerned and such provision should not be staturorily enforced by making it punishable with some fine thereby equating such person who refuses who wear helmet with a serious criminal. She has further submitted that the authorities can educate the people regarding the advisability of wearing helmet and there need not be any strict statutory enforcement. As already indicated, Respondent Nos.4 & 5 have challenged the validity of the G.O., and such writ petition has been dismissed. It has been found that there is no violation of Article 19 or Article 21 of the Constitution. Therefore, most of the contentions raised by Respondent Nos.4 & 5 are

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already negatived by the Division Bench.

13. It is of course that there are certain actions which can be considered as "self-regarding actions" and certain actions which are to be termed as "other regarding actions". Self-regarding action affects only the person and may not affect any other person and therefore, the other person should not impede the liberty of the person to do any "self-regarding action". Even though the above philosophy appears to be acceptable to certain extent, yet the Society cannot lose sight of the necessity to impose certain rules or regulations even relating to other matters which can be described as "self-regarding action". It is the opinion of many Scientists including Neurologists that wearing of helmet reduces the possibility of accident becoming fatal. Therefore, the necessity of a provision making it compulsory for wearing the helmet is to protect the unwary victims of unforeseen accidents. It is no doubt true that ultimately it is the individual who is affected. However, since the State or the Society has the duty to protect the individual, one can say that the State is discharging its duties by enacting such a provision. It is not for the Courts to examine the wisdom of such a provision on the basis of half-baked statistics furnished to the contrary. Ultimately it is the law which has been enacted has to be enforced by the court of law as well as the Executive.

14. Section 129 of the Motor Vehicles Act has made it mandatory for wearing of helmet. The proviso to such section contains an enabling provision under which the State can make rules providing for any exemption. Such law has been enacted by the Parliament in its wisdom. The assertion that such provisions have been made with a view to help the helmet manufacturers, is just be stated to be rejected. Moreover, any imputation relating to collective mala fides against the Parliament, cannot be countenanced. Validity of Section 129 is not an issue in the present writ petition. Validity of the G.O. regarding compliance with Section 129 has already been upheld by the Division Bench in the decision reported in (2007) 5 MLJ 1351 (cited supra).

15. In such view of the matter, it is futile and too late in the day to contend that wearing of helmet need not be made mandatory and should be left to the option of the individual concerned. In this connection, it is necessary to clarify certain misconception. An impression seems to have been gathered in some quarters that Section 129 is being implemented for the first time through the Government Order or through the Rules framed by the Government on the basis of any decision of the Court. Respondent Nos.4 and 5 have not been able to refer to any provision of the Motor Vehicles Act remotely indicating that Section 129 is inapplicable in the absence of any Government Order or any Rule to be made. The clear language of Section 129 leaves no room for doubt that as soon as the statute containing such provision comes into force, wearing of helmet is compulsory and only exemption is contained in two provisos. Under the provisos, the State Government is only empowered to frame rules

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making any exemption. Since such provision is applicable on its own steam, there cannot be any debate on the question of making wearing of helmet compulsory or otherwise. (In fact similar provision also contained in the Motor Vehicles Act, 1939 in the shape of Section 85A). In such view of the matter, there is hardly any scope to countenance any of the contentions raised by Respondent Nos.4 & 5, save and except observing that it is not for the Court to decide about the wisdom of such provision.

16. The most important question which remains to be answered is relating to the prayer of the petitioner which was described as additional prayer in the previous order of the Division Bench. It is quite clear that for violation of such provision, action can be taken under Section 177 of the Motor Vehicles Act by imposition of fine. The State Government, in its counter affidavit has indicated that steps are being taken to implement such provision in letter and spirit. In view of such stand taken, we do not think any specific direction be issued in the matter, save and except by observing that the provisions are meant to be implemented and it is the duty of the law enforcing agency to faithfully and honestly implement the provisions.

17. In the course of hearing, Respondent No.4 has expressed apprehension that the provision is being abused by the law enforcing authority. In the absence of any concrete material, it is difficult for us to express any definite opinion in this matter. However, we deem it fit to observe that it is the duty of the responsible superior officers to see that no provision of law is exploited by any unscrupulous element. It is for the second respondent to devise ways and means to control any transgression or abuse of the provisions by any person or official.

18. The writ petition is disposed of with the aforesaid observations. No costs.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Chief Secretary,
   The State of Tamil Nadu,
   Fort St. George,
   Chennai 600 009.

2. The Director General of Police,
   Government of Tamil Nadu,
   Government Estate,
   Chennai 600 002.

+ one cc to Mr. R. Muthukrishan, (Party-in-person),Sr.75962

+ one cc to the Government Pleader, SR.76002

+ one cc to Mr. C. Lakshmi Narain, Petitioner-in-person,
SR.75978

SGL(CO)
RP 09.01.2008

W.P.NO.19387/1999

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